UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/C.12/1999/SR.34/Add.1
23 November 1999

Original: ENGLISH

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Twenty-first session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)* OF THE 34th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 18 November 1999, at 11.05 a.m.

Chairperson: Mrs. BONOAN-DANDAN
later: Mr. CEAUSU
(Vice-Chairperson)

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* The summary record of the first part (closed) of the meeting appears as document E/C.12/1999/SR.34

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GE.99-45809 (E)

The public part of the meeting was called to order at 11.05 a.m.

CONSIDERATION OF REPORTS

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (agenda item 6) (continued)

Second periodic report of Argentina (HRI/CORE/1/Add.74; E/1990/6/Add.16; E/C.12/Q/ARG/1; written replies to the list of issues and additional statistics prepared by the Argentine Government (documents without a reference number)) (continued)

1. At the invitation of the Chairperson, the members of the Argentine delegation resumed their places at the Committee table.

2. The CHAIRPERSON invited the delegation to continue its responses to the issues raised, beginning with article 6 of the Covenant.

3. Mrs. NASCIMBENE de DUMONT (Argentina) said that document E/C.12/1999/SA/1 contained details of measures adopted by the Argentine Government in relation to the dispute involving the return of the territory of Pulmarí to the Mapuche indigenous community. The Ombudsman had taken up the personal defence of the chief of the indigenous community and a mediation commission had been set up comprising the head of the National Institute of Indigenous Affairs, the Under-Secretary of Natural Resources and the Director of Indigenous Affairs for the province of Neuquén. At the request of the mediation commission, the judge concerned had decided not to rule on the case until agreement had been reached between all the parties to the dispute. However, the Chairman of the Pulmarí Interstate Corporation (CIP) had been replaced and external arbitration had been sought to try to resolve the dispute. Additional funding of US$ 5 million had also been provided.

4. Responding to questions raised regarding the incorporation of the Covenant in the Argentine Constitution, she said that, following the amendment of the Constitution in 1994, the provisions of the Covenant had risen in the hierarchy of laws established therein. The aim of the legislature had been to avoid any possible conflict between constitutionality and the various international instruments incorporated in internal law. Theoretically, it was now possible to invoke the Covenant in a court of law, but, given that the idea was a fairly new one, time was required to digest the implications of such a move. Similarly, the progressive approach called for in article 2 of the Covenant had not yet been fully assimilated: in that connection, the Committee's advice as to how best to comply with article 2 would be greatly appreciated. Within individual ministries no official had been assigned the task of monitoring compliance with economic, social and cultural rights in the various policy decisions taken in different municipalities. Each ministry had a legal department that served as a clearing house for all proposed resolutions and measures and verified their compatibility with the Constitution and the two International Covenants.

5. In response to the concerns expressed regarding the fact that macroeconomic growth had not helped to reduce poverty levels, she said that the Government's priority was to achieve

economic development in the broadest sense for the Argentine people. Various measures had been adopted to improve the employment situation and combat inflation. It was clear that poverty had increased over the past four years, but it was questionable whether any meaningful conclusions could be drawn concerning such a short period. It should be borne in mind that between 1991 and 1995 poverty levels had in fact fallen. Account must be taken of the social impact on ordinary people of the various crises that had occurred, for example the hyperinflation at the end of the 1980s. Accordingly, the whole of the past decade should be taken into consideration in any analysis of Argentina's economic situation. Consensus had at least been reached on the opening up of national markets, monetary stability and privatization: all those choices had been made by the Argentine people through free, democratic elections.

6. Turning to the actual content of article 6 of the Covenant, she said that annexes 9 to 14 distributed before the meeting provided all the necessary unemployment statistics, broken down according to sex and age. With regard to No. 16 of the list of issues relating to the main victims of unemployment, the tables provided in the replies showed what was being done by the National Government, individual provinces and non-governmental organizations (NGOs) to help the indigenous populations affected. A series of employment programmes had been introduced to alleviate the hardship they were experiencing. Those programmes also covered the needs identified in the last census, conducted in 1991. The tables also showed areas where no measures had been taken.

7. With regard to issue No. 17, the economically active population numbered 15.5 million, or about 42 per cent of the total population. The latest data available showed that 9 million people were in salaried employment, 3,600,000 were self-employed, and that 1,900,000 or 14.5 per cent of the economically active population, were unemployed. Of the 9 million in salaried employment, 8 million worked in the private sector and 1 million in the State sector. Of the 8 million in the private sector, about 4.4 million were registered, while the remainder were unregistered in the sense that they did not make social security contributions or did so only on an irregular basis. The Government had adopted two sets of measures to reduce the number of workers in the informal sector: firstly, tax incentives designed to encourage the hiring of new categories of workers; and secondly a programme launched in November 1996 to combat unregistered employment. The programme was based on coordinated inspections conducted by the provincial departments and the Ministry of Labour and Social Security.

8. With regard to occupational training, a series of tables had been provided for the Committee containing details of the training programmes introduced since 1995, including the amounts and beneficiaries for individual years. Unfortunately, no precise method had been developed to determine the value of the programmes, although the Inter-American Development Bank had offered assistance enabling such an assessment to be conducted. However, research into the results of the "youth" project, conducted from January to March 1998, showed that the project had improved the employment prospects of its beneficiaries. The study distinguished between males and females, and demonstrated that prospects were better for the latter. A study had also been conducted of the impact of the different programmes on sectors where workers had lower levels of training and education, and it had been shown that the programmes were much more effective for such groups.

9. On the conditions and numbers of temporary workers, she said that in 1992 new types of "promoted contracts" had been introduced by Act No. 24,013, whose aim was to reduce labour costs by decreasing employers' contributions and obviating the need for separation payments. It should be noted that such contracts had not been imposed on the workforce by the Executive but approved through an act of Congress, which implied the participation of all sectors of society, political parties and employees. In 1995 Act No. 24,465 had extended the scope of such contracts to cover apprenticeships and probationary periods so as to ensure greater flexibility in hiring staff, particularly in the small and medium-sized enterprises, in which most jobs were created. In 1998 there had been around 255,000 workers employed under such conditions. In October of the same year "promoted contracts" had been abolished by Act No. 25,013. However, since such contracts tended to run for 24 months, they still governed the terms and conditions of work of some 45,000 people.

10. The length of the working day was established not by the Executive but through acts of Congress. Working hours in Argentina were more or less the same as in other Latin American countries. In 1997 President Menem had submitted a proposal to the International Labour Organization (ILO) aimed at reducing working hours in all member States. Although there had been reports in the national press that the new Government might follow up that proposal, to date no bill had been brought before Congress.

11. With regard to the unemployed and assistance provided to them, under Argentine labour law and for the purposes of compiling national statistics an unemployed person was defined as one who was actively seeking work, and those who opted out of employment were not taken into consideration. The quoted figure of 1.9 million unemployed covered both the formal and informal sectors. However, only persons from the formal sector - i.e. those whose employment contract had been registered - were entitled to unemployment benefit. At present around 120,000 such persons were in receipt of benefit. A further 200,000 unemployed persons from the informal sector benefited indirectly through training or job-creation schemes. Unemployment benefit had been introduced in 1991 and Argentina was one of the few countries in Latin America to provide it.

12. On the subject of steps taken to resolve the persistent problem of accidents in the workplace and occupational illness, she acknowledged that safety at work was one area where there was certainly room for improvement. In 1996 hygiene and safety in the workplace had become the responsibility of a branch of the Single Social Security System. Prior to that date victims of accidents had had to wait five years or more for their claims to be settled in court, owing to the slow and cumbersome pace of the administration of justice in Argentina. That problem had been compounded by high solicitors' fees, often totalling as much as 50 per cent of the compensation awarded to victims. Under the new legislation, claims were forwarded automatically to the insurance company. Until 1996 no statistics on accidents at work had been compiled since the courts had not been obliged to keep records of such cases. The only statistics available therefore dated from 1996 and it was difficult to assess whether the situation had in fact improved. In response to complaints about the absence of preventive measures against accidents in the workplace, at the beginning of 1999 the Government had set up a tripartite committee to draft further amending legislation.

13. Mr. VARELA (Argentina), responding to questions on trade union rights, said that following several meetings held in 1998 with the ILO Committee of Experts on the Application of Conventions and Recommendations, the Argentine Government had prepared a draft decree amending Act No. 23,551, incorporating many of the suggestions and recommendations made by the Committee of Experts. However, more recently, on 4 November 1999, a committee made up of members of the coalition which had just won the elections had drafted a bill amending the legislation so as to incorporate all the recommendations made by the Committee of Experts. It had therefore been decided to allow the decree to fall, as an act of Congress was the most appropriate means of amending legislation.

14. There were no plans afoot to amend current legislation governing the right to strike (Act No. 14,786 and Decree No. 214,190 , which provided for the need to maintain a minimum level of essential public services during strikes affecting the public sector. Objections to the legislation focused on the possibility of applying sanctions in the event of minimum services not being provided. Thus far the Ministry of Labour had been very circumspect in its recourse to the decree and the only dispute that had arisen in connection with it had been resolved satisfactorily.

15. The CHAIRPERSON invited members of the Committee to put questions on articles 6, 7 and 8 of the Covenant.

16. Mr. CEAUSU noted that since 1996 the situation in Argentina with regard to safety and hygiene in the workplace had improved slightly through, inter alia, the simplification of complaints procedures for victims seeking compensation. However, the fact that such matters had been handled by the courts prior to 1996 was no justification for the absence of statistics on accidents at work. There must surely be some State body responsible for monitoring safety standards and carrying out inspections, to which employers were required to report when accidents occurred. The records of accidents kept by such a body could be used to compile national statistics.

17. Mr. ANTANOVICH said that according to one NGO source the middle classes accounted for a sizeable portion of the newly poor in Argentina and that in 35 per cent of cases their poverty was brought about by unemployment. What were the causes of the impoverishment of the remaining 65 per cent, and why did the middle classes appear so frequently in poverty statistics for Argentina?

18. He doubted that the rights of temporary workers in Argentina were fully protected in keeping with article 6 of the Covenant. What kind of people generally worked on temporary contracts? For instance, were they migrant workers from neighbouring States?

19. Mr. WIMER ZAMBRANO said that during the previous meeting the Argentine delegation had referred to Argentina's generosity and openness towards immigrants. It was worth noting, however, that Argentina tended to be more generous towards European immigrants than to those from neighbouring countries. Article 31 of the Argentine Immigration Act violated the rights enshrined in article 6, paragraph 1, of the Covenant, affecting chiefly migrant workers from neighbouring countries.

20. Mr. TEXIER, noting that the unemployment rate in Argentina was fairly high, said it would also be interesting to know more about the numbers of under-employed. He would also welcome some further clarification of the conditions attached to unemployment benefit.

21. With regard to article 7, he observed that as a result of the policy of privatization pursued in recent years and the increasing trend towards temporary contracts, there were far fewer safeguards for employees. Were there any plans to remedy the situation? He also sought more information on the legislation authorizing the implementation of collective agreements. Usually such agreements served to enhance existing labour legislation, yet it appeared that was not the case in Argentina.

22. The 1996 reform of legislation relating to safety in the workplace seemed to have effectively transferred responsibility for such matters from the State to private sector insurance companies. However, it was still incumbent upon the State to implement preventive measures, to monitor standards and to compile statistics, tasks which could be achieved only by allocating the necessary resources to the competent body or ministry.

23. Lastly, in connection with article 8, he asked exactly which categories of public employees were not allowed to strike.

24. Mr. Céausu, Vice-Chairperson, took the Chair.

25. Mr. ATANGANA said that since legislation relating to safety and hygiene at work had been amended in 1996 and complaints were no longer handled by the courts, it might be more appropriate to refer to the numbers of claims submitted to the insurance companies.

26. Mr. AHMED, observing that Members' questions had focused on industrial workers' trade union rights, asked whether women household workers, rural agricultural workers and the gauchos were classified as informal, temporary, or unregistered labour, and how their pension rights were protected.

27. Mr. RATTRAY said he was unclear whether it was the concept of temporary worker or that of temporary work that had been introduced by legislation and subsequently abolished. Since work of limited duration clearly still existed, he wondered whether an attempt was being made to subvert the Government's social security and insurance obligations by awarding a person a succession of temporary contracts for the performance of different tasks in a single organization for as long as 10 years. Could such a person lose his entitlement to certain social security benefits?

28. Mr. CEVILLE, after endorsing Mr. Wimer Zambrano's remarks, asked for specific information concerning the black minority's right to work.

29. Mrs. JIMÉNEZ BUTRAGUEÑO observed that in many countries people in their prime were dismissed in order to provide employment for less costly short-term staff. She wondered whether Argentina had addressed the problems of older workers' employment and social security.

30. Mrs. NASCIMBENE de DUMONT (Argentina) said that her reference to a lack of statistics concerned accidents at work prior to 1996. One Committee member had intimated that the Argentine State had defaulted on its obligations to monitor occupational accidents and inspect health and safety conditions in the workplace. Nothing could be further from the truth. Monitoring had not been privatized under the 1996 reform; on the contrary, a new national Superintendency of Occupational Hazards had been established to oversee those functions which had been assigned to the provincial authorities under the Constitution. The preventive measures in force certainly required review and strengthening. However, the Government had striven to provide prompt and adequate compensation to victims of accidents at work and, in the event of death, to their next of kin, unlike the previous regime, under which compensation amounts had been derisory and had been left to the discretion of the courts.

31. The new economic and employment policies established more flexible contracts and working hours. They had not been imposed from above, but had been defined through tripartite discussions, in accordance with ILO guidelines. The recruitment procedures introduced in 1992 and abolished in 1998, known as "promoted" contracts, had covered specified periods, specific events and special circumstances such as the start-up of a new company or assistance to young people in completing their training. Special initiatives aimed at job creation of the sort referred to by Mrs. Jiménez Butragueño had been taken to integrate young people into the labour market and address the prevailing unemployment situation; in consequence, the legislation had been imperfectly implemented for a time.

32. Since labour flexibility was one of the conditionalities imposed on the Government by the International Monetary Fund (IMF), the Committee might wish to inform IMF of its concerns in that regard. Macroeconomic considerations must not be the sole criterion; the social sector's voice should also be heard.

33. Replying to a question from Mr. Antanovich, she said that Argentina was unique in Latin America for the size of its middle class, whose shrinking earning power stemmed from the abolition of posts in public services and the public utilities. The advent of the structural adjustment process had precluded full employment and adequate salaries. Not all Argentina's problems were domestic in origin.

34. She could not refute Mr. Wimer Zambrano's allegation concerning the Immigration Act. However, in that regard she cited article 2, paragraph 3, of the Covenant, which granted developing countries concessions in their implementation of the Covenant's provisions. Argentina was according resident status to immigrants, and while she could not produce comparative tables, she was convinced that for many years it had discriminated less than some industrialized countries against certain categories of immigrant. In 1998 Argentina, Bolivia and Peru had signed a tripartite agreement to regularize the situation of immigrants. She would transmit the Committee's concern to the authorities, but urged Members to consider Argentina's situation in its regional context.

35. In response to a question from Mr. Texier, she referred Members to page 13 of the annexes for a more detailed breakdown of unemployment and under-employment. To another question from Mr. Texier, she replied that firms with a maximum of 40 workers and a turnover of $Arg 2-4 million had been permitted more flexibility in granting vacation time and

compensation for dismissal. In proposing that law, which had since passed through Congress, the Government had applied the latest ILO guidelines, to the effect that collective bargaining should not adversely affect workers' vacation rights. The flexibility arrangement had been introduced with the consent of all those involved.

36. Mr. VARELA (Argentina) said that a decree regulating trade union freedom determined the minimum services considered essential in the context of the right to strike, in accordance with article 8 of the Covenant. They affected hospital and transport workers and those in vital public utilities, who were not prevented from striking, but were required to guarantee at least a skeleton service. ILO had supported the Government in connection with a complaint concerning a transport strike. The decree specified that the service to be guaranteed should be determined by the parties, failing which the Ministry of Labour and the ministry with competence for the sector concerned would intervene. However, the Ministry of Labour had rarely availed itself of that power.

37. In the three years since the introduction of the new insurance regime there had been positive developments concerning accidents in the workplace, including access to reliable data. A firm trend could not be established in so short a period, but the ratio of accidents to persons exposed had fallen considerably.

38. Mr. HUNT, after applauding the establishment of a mechanism whereby each ministry's legal department verified the compatibility of its proposals with the provisions of the Covenant, suggested that the State party should ensure that the relevant ministries took the Covenant into account at the beginning, rather than the end, of the process, when policy was being formulated

39. Mrs. JIMÉNEZ BUTRAGUEÑO requested the Argentine delegation to make available to Committee members in writing the wealth of information and statistics it had provided in its oral replies.

The meeting rose at 1 p.m.